requisites of a contract relation are lacking. The mortgagee is not a party to the agreement, and gave no consideration, either executed or promissory. In truth there are not two contracts, and thus the mortgagee must be regarded as a beneficiary with an independent vested right, if, as the court contends, he may recover irrespective of the owner's act. See 23 HARV. L. REV. 311; 27 *ibid.* 763. It is wrong, however, to place this construction on the absence of conditions appended to the mortgagee clause, which is better construed to give the mortgagee only a vicarious right. *Delaware Ins. Co.* v. *Greer*, 120 Fed. 916.

LANDLORD AND TENANT — RENT — DISTRESS: MAY TENANT'S RECEIVER ENJOIN DISTRESS FOR ADVANCE RENT? — The defendant leased premises to a company which agreed to pay rent yearly in advance. At the beginning of the second year it failed to pay as agreed and the defendant distrained for the rent. Later the company went into the hands of a liquidator, who seeks to enjoin the defendant from proceeding further with the distress. *Held*, that the injunction will not issue. *Venner's Electrical Cooking & Heating Appliances* v. *Thorpe*, 60 Sol. J. 27 (C. A.).

It is well settled that a receiver takes property subject to all claims against it, legal or equitable, in the hands of the person or corporation from whom he takes. *Chicago Title and Trust Co.* v. *Smith*, 158 Ill. 417, 41 N. E. 1076; *Commercial Pub. Co.* v. *Beckwith*, 167 N. Y. 329, 60 N. E. 642. Again it has been explicitly held that a distress previously levied for rent in arrears is valid against the receiver. *In re Roundwood Colliery Co.*, [1897] 1 Ch. 373. The fact, moreover, that a distress is levied immediately for rent due in advance, when the agreed time of payment is past, in no way impairs its validity. *Atkins* v. *Byrnes*, 71 Ill. 326; *London, etc. Discount Co.* v. *London, etc. Ry. Co.*, [1893] 2 Q. B. 49. The defendant, therefore, was quite within his legal rights in proceeding with the distress in the principal case. Where this is so, equity will interpose only where it appears necessary to restrain an unconscionable abuse of the right. See *In re Roundwood Colliery Co., supra*, 380. No sufficient evidence of inequitable conduct on the part of the defendant appearing, for he clearly was not acting inequitably in endeavoring to collect his due advance rent, the court seems properly to have denied the plaintiff's motion.

LIBEL AND SLANDER — DAMAGES — AGGRAVATION OF DAMAGES BY PLEA OF JUSTIFICATION. — In an action of libel the defendant pleaded truth in justification. *Held*, that the plea may be considered in aggravation of damages. *O'Malley* v. *Illinois Publishing and Printing Co.*, 51 Nat. Corp. Rep. 475 (App. Ct. of Ill., 1st Dist.).

It is well settled that "actual malice" in the publication of a defamation opens the defendant to exemplary damages. *Paxton* v. *Woodward*, 31 Mont. 195, 78 Pac. 215; *Lee* v. *Crump*, 146 Ala. 655, 40 So. 609. See ODGERS, SLANDER AND LIBEL, 5 ed., 389. By malice is meant not necessarily the defendant's knowledge of the falsity of the statement, but also his recklessness as to its truth, or his intent to injure the plaintiff. *Palmer* v. *Mahin*, 120 Fed. 737. See ODGERS, SLANDER AND LIBEL, 5 ed., 390. The weight of authority, including the principal case, holds that a plea of justification, if not proved, is evidence of malice in the original publication and hence aggravates damages. *Gorman* v. *Sutton*, 32 Pa. St. 247; *Krulic* v. *Petcoff*, 122 Minn. 517, 142 N. W. 897. See *Coffin* v. *Brown*, 94 Md. 190, 199, 50 Atl. 567, 570. Many courts, however, hold that the plea must be found to have been introduced in bad faith to be given this effect. *Fodor* v. *Fuchs*, 79 N. J. L. 529, 76 Atl. 1081; *Henderson* v. *Fox*, 83 Ga. 233, 9 S. E. 839. It is submitted that only if so introduced is the plea logically probative of either a carelessness of truth or an intent to injure. Of course no action itself could be brought on the plea, because it is absolutely

privileged. *McGehee* v. *Ins. Co. of North America*, 112 Fed. 853. See ODGERS, SLANDER AND LIBEL, 5 ed., 242. And it might well be urged that the reason back of this privilege, *i. e.*, the freedom of a party to an action to make a defense, demands that the plea should not aggravate damages.

LIMITATION OF ACTION — NATURE AND CONSTRUCTION OF STATUTE — INABILITY TO DISCOVER BREACH OF WARRANTY PREVENTING RUNNING OF STATUTE. — A defendant pleaded a set-off based on a breach of warranty of goods sold. The breach was not discovered for a considerable time after delivery. The period prescribed by the Statute of Limitations had run since the delivery, but not since the discovery of the breach. *Held*, that the Statute runs only from the expiration of a reasonable length of time within which the defendant could have discovered the breach. *Sheehy Co.* v. *Eastern Importing & Mfg. Co.*, 43 Wash. L. R. 708 (D. C. App.).

When goods are sold under a warranty, the warranty is broken on delivery of inferior goods, and a right of action at once accrues to the buyer. *Vogel* v. *Osborne*, 34 Minn. 454, 26 N. W. 453. Ordinarily the Statute of Limitations begins to run simultaneously. But where the defect is revealed only after a lapse of time, an injured party may have his right of action barred before he is aware that he has such a right. Likewise, in warranties of title, the buyer may have to sue before being disturbed in possession in order to have his right of action, when his damages are purely speculative. These considerations have led some courts to adopt the view of the principal case. *Felt* v. *Reynolds Rotary, etc. Co.*, 52 Mich. 602, 18 N. W. 378; *Gross* v. *Kierski*, 41 Cal. 111. The weight of authority is, however, that the statutory period runs from the breach of the warranty. *Allen* v. *Todd*, 6 Lans. (N. Y.) 222; *Perkins* v. *Whelan*, 116 Mass. 542. See *Battley* v. *Faulkner*, 3 B. & Ald. 288. See 2 GREENLEAF, EVIDENCE, § 435. But where a defendant has fraudulently concealed the right of action the rule is usually lightened, although this result was not reached without some difficulty. *Gibbs* v. *Guild*, 9 Q. B. D. 59; *Sherwood* v. *Sutton*, 5 Mason (U. S.) 143. See 29 HARV. L. REV. 226. The basis of these cases is apparently an unwillingness to allow the defendant to profit by his own wrong. This would not, therefore, include the principal case, the result of which, though just, seems difficult to reach in view of the express wording of the Statute.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — COMMON-LAW ALTERNATIVE CLAUSE — EFFECT OF ABROGATION OF ASSUMPTION OF RISK. — An employee of the defendant railroad, who was hired for the purpose of repairing electrical apparatus, was killed by a shock sustained while at work on a defective insulator. The defendant, who was free from any fault in the accident, had not subscribed to the insurance clause of a Workmen's Compensation Act. By the Massachusetts Act (1911, Mass. Acts and Resolves, ch. 751, § 1), an employer who is not a subscriber loses the right to plead the "*defense*" of assumption of risk. The defendant is sued by the estate of the deceased. *Held*, that the plaintiff cannot recover. *Ashton* v. *Boston & M. R. Co.*, 109 N. E. 820 (Mass.).

There is a clear distinction between the assumption of the risks incident to the inherent dangers of a business and the assumption of those risks created by the evident negligence of the employer. *Rigsby* v. *Oil Well Supply Co.*, 115 Mo. App. 297, 91 S. W. 460. See Note, 28 L. R. A. N. S. 1215; Buford, "Federal Employers' Liability Act," 28 HARV. L. REV. 163, 177. For in its first sense assumption of risk is simply indicative of the fact that the status of master and servant has not put the master in the position of an insurer by creating a relational liability without fault. See *Duffey* v. *Consolidated Block Coal Co.*, 147 Ia. 225, 228, 124 N. W. 609, 610. But in its second meaning the phrase indicates an affirmative defense protecting the employer in spite of his